



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 117**

**[Docket No. USCG-2021-0778]**

**RIN 1625-AA09**

### **Drawbridge Operation Regulation; Willamette River, Portland, OR**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Morrison Bridge across the Willamette River, mile 12.8, at Portland, OR. Multnomah County, Oregon, the bridge owner, is requesting to change the current regulation to allow painting and preservation of the Morrison Bridge including the double bascule span. The modified rule would change from a full span opening to a single leaf, half opening, and operation. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Coast Guard anticipates that this proposed rule will be effective from 7 p.m. on April 1, 2022, through 7 p.m. on May 31, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0778 using Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Steven Fischer, Thirteenth District Bridge Administrator, U.S. Coast Guard; telephone 206-220-7282, email [d13-smb-d13-bridges@uscg.mil](mailto:d13-smb-d13-bridges@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
County	Multnomah County

**II. Background, Purpose and Legal Basis**

Multnomah County, Oregon, owns and operates the Morrison Bridge across the Willamette River at mile 12.8. The County is requesting a temporary change to the existing operating regulation. The County is proposing to open the Morrison Bridge's span in single leaf mode, half of the double bascule span, to marine vessels with a minimum of two-hour notice, or four-hour notice if a tug assist is needed. The County needs to maintain half of the draw closed to allow for preservation and paint efforts. The proposed regulation change would allow the Morrison Bridge to alternate operation of the east or west leaf span from April 1, 2022, through May 31, 2023. The west span will be operational at the beginning of construction and the east span will be closed to navigation. The dates to switch operational spans will be determined later and published in the Local and Broadcast Notice to Mariners. This proposal also allows a containment system under the bridge that reduces the non-opening half of the bridge's vertical clearance by 5 feet from 69 feet center to 64 feet, and from 48 feet on the sides to 43 feet above the Columbia River Datum 0.0. Marine traffic on this section of the Willamette River consists of vessels ranging from small pleasure craft up to large commercial vessels and barges. The subject bridge currently operates in accordance with 33 CFR

117.897(c)(3)(iv).

### **III. Discussion of Proposed Rule**

The Coast Guard proposes a temporary change to 33 CFR 117.897(c)(3)(iv) to be in effect from 7 p.m. on 1 April, 2022, through 7 p.m. on 31 May, 2023. This temporary rule will suspend the current regulatory cite regarding the Morrison Bridge, and add a temporary 33 CFR 117.897(c)(3)(vi) which will amend the operating schedule of the Morrison Bridge by requiring a two-hour notice, or four-hour notice with tug assist, for all draw openings, and alternate the operation of the double bascule spans to single span which will reduce the horizontal clearances of the bridge. The temporary rule is necessary to accommodate preservation and painting of the Morrison Bridge. This bridge provides a vertical clearance approximately 69 feet, at the center, above Columbia River Datum 0.0 when in the closed-to-navigation position. One half of the bascule bridge will have a containment system installed on the non-opening half of the span, which will reduce the vertical clearance by 5 feet to 64 feet center and 43 feet on the sides. A tug will be available for assists to mariners as needed when a request is given with a notice of four hours for an opening. The horizontal clearance with a full opening is 185 feet, therefore, in single leaf operations, a temporary rule change will reduced the horizontal clearance to approximately 90 feet. Vessels able to transit under the Morrison Bridge without an opening may do so at any time. Marine vessels are advised to be aware of fall hazards. This section of the Willamette River has no alternate routes. During the Portland Rose Festival, both leafs of the double bascule span will be fully operational. If any mariner submits a full opening request to the County prior to construction beginning, a full opening can be scheduled. All marine emergency vessels can navigate under the Morrison Bridge without an opening, and therefore do not need to contact the Hawthorne Bridge for an emergency opening.

This regulatory action determination is based on the ability of the Morrison

Bridge to open on signal after the Hawthorne Bridge, at Willamette River mile 13.1, has received at least a two-hour notice, or four-hour notice for tug assist, by telephone at 503-988-3452 or VHF radio request. The Coast Guard has made this finding based on the fact that the proposed change allows any vessel needing a drawbridge opening to transit through the Morrison Bridge after providing adequate notice and being provided with tug assistance if required.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advance notice.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to

the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2021-0778 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic

of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. In § 117.897, stay paragraph (c)(3)(iv) and add paragraph (c)(3)(vi) to read as follows.

#### **§ 117.897 Willamette River.**

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(c) \* \* \*

(3) \* \* \*

(vi) Morrison Bridge, Portland, mile 12.8, will operate a single leaf opening, on signal after the Hawthorne Bridge, at Willamette River mile 13.1, has received, at least a two-hour advance notice, or four-hour advance notice for tug assist, to open by telephone at 503-988-3452 or VHF radio.

**Dated:** November 18, 2021.



M. W. Bouboulis,  
Rear Admiral, U. S. Coast Guard,  
Commander, Thirteenth Coast Guard District.  
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